Calendar No. 33

102D CONGRESS
1st Session

SENATE

REPORT
102–19

NIOBRARA SCENIC RIVER DESIGNATION ACT OF 1991

MARCH 7 (legislative day, FEBRUARY 6), 1991.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 248]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 248) to amend the Wild and Scenic Rivers Act to designate certain segments of the Niobrara River in Nebraska and a segment of the Missouri River in Nebraska and South Dakota as components of the wild and scenic rivers system, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 1, line 4, strike "sited" and insert "cited".
2. On page 1, line 5, strike "act" and insert "Act".
3. On page 3, beginning on line 11, strike subsection (b) in its entirety and insert the following:

> (b) WATER RESOURCES PROJECT.—If, within 5 years after the date of enactment of this Act, funds are not authorized and appropriated for the construction of a water resources project on the 6-mile segment of the Niobrara River from its confluence with Chimney Creek to its confluence with Rock Creek, at the expiration of such 5-year period the 6-mile segment shall be designated as a component of the National Wild and Scenic Rivers System by operation of law, to be administered by the Secretary of the Interior in accordance with sections 4 and 5 of this Act and the applicable provisions of the Wild and Scenic Rivers Act (16 U.S.C. 1271–1287). The Secretary of the Interior shall publish notification to that effect in the Federal Register.

4. On page 5, line 4; page 6, line 21; page 7, lines 4, 10 and 25; and page 10, line 20, strike "title" and insert "Act".

★ Star Print 49–010

S313-3

5. On page 10, line 7, strike "national park system." and insert "National Park System.".

6. On page 10, line 11, strike "nature" and insert "Nature".

Purpose of the Measure

The purpose of S. 248, as reported, is to amend the Wild and Scenic Rivers Act to designate three segments of the Niobrara River in Nebraska and a segment of the Missouri River in Nebraska and South Dakota as components of the Wild and Scenic Rivers System.

Background and Need

As it enters Nebraska from the west, the Niobrara River is a small, clear, high plains stream. The river flows approximately 350 miles across the north-central region of Nebraska to its confluence with the Missouri River. In its journey across the State, the Niobrara has sculpted a lush forested and lowland meadow valley that contrasts with the adjacent sandhills and high plains. Both deciduous and coniferous forest types are found in the river valley, which also contains bluffs several hundred feet high with numerous waterfalls and springs. The area has high wildlife values. Several endangered species are found in the valley and large numbers of bald eagles winter there. Canoeing and fishing are popular recreational activities along the river.

In the northwest corner of the State, the Niobrara meanders through the 3,055-acre Agate Fossil Beds National Monument, administered by the National Park Service. Near Valentine, the river passes through the 29,000-acre Fort Niobrara National Wildlife Refuge, administered by the U.S. Fish and Wildlife Service, and the 52,000-acre Niobrara Valley Preserve, owned by the Nature Conservancy.

While many rivers in the region have been altered by impoundment or channelization, the Niobrara retains much of its original quality. The 1982 Nationwide Rivers Inventory, prepared by the National Park Service, identified a 194-mile segment of the Niobrara as having outstandingly remarkable values in all seven of the categories studied, and another 59-mile segment as having outstandingly remarkable values in four categories.

Legislative History

S. 248 was introduced by Senators Exon and Kerrey on January 23, 1991. The provisions of S. 248, as ordered reported, are identical to a bill which passed the Senate on October 27, 1990. The House subsequently took up the measure, but it failed to receive the two-thirds vote necessary to suspend the rules and pass the bill. No further action was taken.

At the business meeting on February 27, 1991, the Senate Committee on Energy and Natural Resources ordered S. 248, as amended, favorably reported.

Committee Recommendations and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on February 27, 1991, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 248 if amended, as described herein.

Committee Amendments

Although there were no substantive changes made in S. 248 as introduced, several technical amendments were adopted. The amendments are self-explanatory.

Section-by-Section Analysis

Section 1 provides that this Act may be cited as the "Niobrara Scenic River Designation Act of 1991".

Section 2 amends the Wild and Scenic Rivers Act by adding three segments of the Niobrara River in Nebraska, comprising approximately 95 miles, as components of the Wild and Scenic Rivers System. The section also adds a 39-mile segment of the Missouri River in Nebraska and South Dakota as a component of that system.

Section 3 amends section 5(a) of the Wild and Scenic Rivers Act to provide for the study of a 6-mile segment of the Niobrara from its confluence with Chimney Creek to its confluence with Rock Creek to determine its suitability for inclusion in the Wild and Scenic Rivers System.

Subsection (b) provides that if funds are not authorized and appropriated within 5 years after the date of enactment of this Act for the construction of a water resources project on the 6-mile study segment, then, at the expiration of such 5-year period, the study segment will be designated as a component of the Wild and Scenic Rivers System by operation of law. The Secretary of the Interior is directed to notify the public of such action in the Federal Register.

Section 4 imposes limitations on the Secretary's authority to acquire lands and interests in lands within two of the three segments of the Niobrara River designated as components of the Wild and Scenic Rivers System by this Act. These limitations are in addition to, and not in lieu of, the several limitations on land acquisition already contained in section 6 of the Wild and Scenic Rivers Act.

Section 5 establishes an 11-member Niobrara Scenic River Advisory Commission to advise the Secretary on matters pertaining to the operation and management of two of the three segments of the Niobrara Wild and Scenic River added to the system.

Section 6 contains provisions concerning the 39-mile segment of the Missouri River designated by this Act.

Subsection (a) provides for the establishment of a citizen's advisory group to advise the Secretary concerning the administration of the river segment.

Subsections (b) and (c) relate to (1) the placement of bridges over the river segment and (2) the authority for the use of erosion control measures along its banks, respectively.

Section 7 directs the Secretary to conduct a study regarding the feasibility and suitability of designating certain lands in Knox and Boyd Counties, Nebraska, as a national recreation area. The study is to be completed within 18 months after the date of enactment of this Act. The Secretary is authorized to provide grants and technical assistance to the State, affected political subdivisions, and the Sante Sioux Indian Tribal Council to assist in carrying out the study.

Section 8 directs the Secretary to study the feasibility and suitability of establishing a national park in the State of Nebraska to be known as the Niobrara-Buffalo Prairie National Park. The area to be studied is identified on an appropriately referenced map, and does not include any lands within the boundary of the Fort Niobrara National Wildlife Refuge. This study is also to be completed within 18 months after the date of enactment.

Section 9 authorizes the appropriation of such sums as may be necessary to carry out the provisions of this Act.

Cost and Budgetary Considerations

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 248. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 248, as reported.

Executive Communications

The pertinent legislative report received by the Committee from the Department of the Interior setting forth executive agency recommendations relating to S. 248 is set forth below:

U.S. Department of the Interior,
Office of the Secretary,
Washington, DC, February 26, 1991.

Hon. J. Bennett Johnston,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: This is to provide you with our views on S. 248, the "Niobrara Scenic River Designation Act of 1991."

We strongly oppose enactment of S. 248.

S. 248 would designate three segments of the Niobrara River in Nebraska and one segment of the Missouri River in Nebraska and South Dakota as "instant" components of the National Wild and Scenic Rivers System without the benefit of a formal study under section 5 of the Wild and Scenic Rivers Act. This bill would also authorize a study of a 6-mile segment of the Niobrara River for inclusion into the National Wild and Scenic Rivers System, and would call for automatic inclusion of this segment of the river if funds are not authorized and appropriated for the construction of a water resources project on this segment within five years of enactment of this legislation.

S. 248 would also:

Establish the Niobrara Scenic River Advisory Commission;

Require the Secretary to establish a recreational river advisory group with which the Secretary must consult in the process of administering the Missouri River segment designated for wild and scenic river status by this bill;

Require a study on the feasibility and suitability of designating certain lands connected with the Niobrara and Missouri Rivers in Nebraska and South Dakota as a national recreation area; and

Require a study of the feasibility and suitability of establishing the Niobrara-Buffalo Prairie National Park in the State of Nebraska.

Under the Wild and Scenic Rivers Act, any component of the National Wild and Scenic Rivers System that is administered by the Secretary of the Interior through the National Park Service "shall become part of the National Park System . . . (and) shall be subject to the provisions . . . under which the national park system is administered." In a signing statement to accompany the Act to establish the Ulysses S. Grant National Historic Site in Missouri, President Bush expressed his disappointment that the Congress ignored the Department's recommendation that a formal new area study precede the establishment of a new unit of the National Park System. "To protect the integrity and viability of the National Park System, completion of such a study should be a prerequisite for establishment of any new unit of the National Park System."

We therefore strongly recommend that Congress follow the practice established under the Wild and Scenic Rivers Act and provide for studies of the river segments that are the subject of this bill to determine their suitability and feasibility for addition to the National Wild and Scenic Rivers System.

Even though the segments contained in this bill are included in the Nationwide Rivers Inventory published by the National Park Service in 1982, this inventory was not meant to, and indeed cannot, substitute for a full-fledged suitability study pursuant to section 5(a) of the Wild and Scenic Rivers Act.

We also object to the provision that would require Secretarial administration of the Missouri River segment designated by this bill to be in consultation with a recreational river advisory group established pursuant to section 5. Even though this group would seem to be advisory in nature, the bill is vague as to the duties and limitations of this group. In addition, the consultation requirement would be duplicative because under the National Park Service

guidelines, consultation with public, State, and Federal agencies is required whenever a management plan is developed for a unit of the National Park System. Such a plan would be prepared if these segments are made part of the National Wild and Scenic Rivers System. Therefore, this consultation requirement is duplicative and unneeded.

In conclusion, unless S. 248 is amended to provide for a study of possible future designation of the Niobrara and the Missouri River segments as part of the National Wild and Scenic Rivers System, and the provision relating to the recreational river advisory group is deleted, the Secretary will recommend that the President veto the bill.

The Office of Management and Budget has advised that enactment of S. 248 would not be in accord with the program of the President.

Sincerely,

S. SCOTT SEWELL,
Deputy Assistant Secretary for Fish and Wildlife and Parks.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 248, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

WILD AND SCENIC RIVERS ACT

AN ACT To provide a National Wild and Scenic Rivers System, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Wild and Scenic Rivers Act".

* * * * * * *

SEC. 3. (a) The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

* * * * * * *

( ) NIOBRARA, NEBRASKA.—(A) The 40-mile segment from Borman Bridge southeast of Valentine downstream to its confluence with Chimney Creek and the 30-mile segment from the river's confluence with Rock Creek downstream to the State Highway 137 bridge, both segments to be classified as scenic and administered by the Secretary of the Interior. That portion of the 40-mile segment designated by this subparagraph located within the Fort Niobrara National Wildlife Refuge shall continue to be managed by the Secretary through the Director of the United States Fish and Wildlife Service.

(B) The 25-mile segment from the western boundary of Knox County to its confluence with the Missouri River, including that segment of the Verdigre Creek from the north municipal boundary

of Verdigre, Nebraska, to its confluence with the Niobrara, to be administered by the Secretary of the Interior as a recreational river.

After consultation with State and local governments and the interested public, the Secretary shall take such action as is required under subsection (b) of this section.

( ) MISSOURI RIVER, NEBRASKA AND SOUTH DAKOTA.—The 39-mile segment from the headwaters of Lewis and Clark Lake to the Ft. Randall Dam, to be administered by the Secretary of the Interior as a recreational river.

* * * * * * *

SEC. 5. (a) * * *

* * * * * * *

( ) NIOBRARA, NEBRASKA.—The 6-mile segment of the river from its confluence with Chimney Creek to its confluence with Rock Creek.

○